

Before the
Federal Communications Commission
Washington, D.C. 20554

| | | |
|-----------------------------------|---|------------------------------|
| In the Matter of |) | File No.: EB-SED-12-00000691 |
| |) | |
| KSBJ Educational Foundation, Inc. |) | Acct. No.: 201432100005 |
| |) | |
| |) | FRN: 0006157721 |

ORDER

Adopted: December 18, 2013

Released: December 18, 2013

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) and KSBJ Educational Foundation, Inc. (KSBJ). The Consent Decree resolves and terminates the Bureau’s investigation into possible violations of Section 301 of the Communications Act of 1934, as amended (Act),¹ and Sections 25.102(a) and 25.121(e) of the Commission’s rules (Rules),² pertaining to the possible unauthorized operation of a fixed earth station.

2. The Bureau and KSBJ have negotiated the Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether KSBJ possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 503(b) of the Act,³ and Sections 0.111 and 0.311 of the Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 25.102(a), 25.121(e).

³ 47 U.S.C. §§ 154(i), 154(j), 503(b).

⁴ 47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Randy Schroeder, Chairman of the Board, KSBJ Educational Foundation, Inc., 327 Wilson Boulevard, Humble, TX 77347, and to A. Wray Fitch III, Esq., Gammon & Grange, P.C., Counsel for KSBJ Educational Foundation, Inc., 8280 Greensboro Dr., Seventh Floor, McLean, VA 22102.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief
Enforcement Bureau

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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and KSBJ Educational Foundation, Inc., by their respective authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into possible violations of Section 301 of the Communications Act of 1934, as amended,¹ and Sections 25.102(a) and 25.121(e) of the Commission's rules,² pertaining to the apparent unauthorized operation of a fixed earth station.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) "Communications Laws" means, collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which KSBJ is subject by virtue of its business activities, including but not limited to, the Licensing Rules.
 - (f) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 10.
 - (g) "Covered Employees" means all employees and agents of KSBJ who perform, or supervise, oversee, or manage the performance of, duties that relate to KSBJ's responsibilities under the Licensing Rules.

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 25.102(a), 25.121(e).

- (h) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (i) “Investigation” means the investigation commenced by the Bureau’s May 31, 2012, letter of inquiry³ regarding whether KSBJ operated fixed earth station E940280 in Humble, Texas, after expiration of its license.
- (j) “KSBJ” means KSBJ Educational Foundation, Inc., and its predecessors-in-interest and successors-in-interest.
- (k) “Licensing Rules” means Section 301 of the Act, Sections 25.102(a) and 25.121(e) of the Rules,⁴ and other Communications Laws governing the use or operation of fixed satellite earth stations.
- (l) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by KSBJ to implement the Compliance Plan.
- (m) “Parties” means KSBJ and the Bureau, each of which is a “Party.”
- (n) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Section 301 of the Act and Section 25.102(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by an earth station except under and in accordance with an authorization granted by the Commission.⁵ Section 25.121(e) requires a licensee of an earth station to file its renewal application “no earlier than 90 days, and no later than 30 days, before the expiration date of the license.”⁶ Absent a timely filed renewal application, an earth station license automatically terminates at the end of the license period.⁷

3. Commission records indicate that KSBJ did not timely file an application to renew the license for its fixed earth station (call sign E940280), and as a result, the license automatically expired on June 24, 2004.⁸ On September 13, 2011, KSBJ filed with the Commission’s International Bureau a request for Special Temporary Authority (STA) to operate an earth station.⁹ On January 18, 2012, the International Bureau dismissed the STA request because it was defective.¹⁰ Two days later, on January 20, 2012, KSBJ filed a second STA request, which the International Bureau granted on January 23,

³ See Letter from John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Mark Wanner, Senior Director of Planning and Technology, KSBJ Educational Foundation (May 31, 2012) (on file in EB-SED-12-00000691).

⁴ 47 U.S.C. § 301; 47 C.F.R. §§ 25.102(a), 25.121(e).

⁵ 47 U.S.C. § 301; 47 C.F.R. § 25.102(a).

⁶ 47 C.F.R. § 25.121(e).

⁷ 47 C.F.R. § 25.161(b).

⁸ See File No. SES-LIC-19940421-01478.

⁹ See File No. SES-STA-20110913-01082.

¹⁰ See Letter from Paul E. Blais, Chief, Systems Analysis Branch, Satellite Division, FCC International Bureau (Jan. 18, 2012).

2012.¹¹ Because it appeared that KSBJ may have operated its earth station after the expiration of the station license, the International Bureau referred this matter to the Enforcement Bureau for investigation and possible enforcement action.

4. On May 31, 2012, the Bureau's Spectrum Enforcement Division issued a letter of inquiry (LOI) to KSBJ,¹² directing KSBJ to submit a sworn written response to a series of questions relating to its operation of fixed earth station E940280. KSBJ responded to the LOI on June 25, 2012.¹³ In its LOI Response, KSBJ stated that it discovered that its earth station license had expired on September 12, 2011, and that it took "immediate action" to come into compliance by filing its initial STA request the next day.¹⁴ KSBJ also acknowledged that it continued to operate the earth station until its initial STA request was dismissed.¹⁵ The Bureau and KSBJ entered into a tolling agreement to toll the statute of limitations.¹⁶

III. TERMS OF THE AGREEMENT

5. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

6. **Jurisdiction.** KSBJ agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, KSBJ agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against KSBJ concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will

¹¹ See File No. SES-STA-20120120-00080. On February 28, 2012, KSBJ filed an application for a new earth station license, which was granted on May 1, 2012 under call sign E120042. See File No. SES-LIC-20120228-00221.

¹² See *supra* note 3.

¹³ See Letter from A. Wray Fitch, Esq., Gammon & Grange, P.C., Counsel for KSBJ Educational Foundation, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (June 25, 2012) (on file in EB-SED-12-00000691) (LOI Response).

¹⁴ See *id.* at 2-3.

¹⁵ See *id.* at 3.

¹⁶ See, e.g., Tolling Agreement Extension, File No. EB-SED-12-00000691, executed by and between John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, and A. Wray Fitch III, Esq., Gammon & Grange, P.C., Counsel for KSBJ Educational Foundation (Sept. 20, 2013) (on file in EB-SED-12-00000691).

not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against KSBJ with respect to KSBJ's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

9. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, KSBJ shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as Compliance Officer and to discharge the duties set forth below. The Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that KSBJ complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his/her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Licensing Rules prior to assuming his/her duties.

10. **Compliance Plan.** For purposes of settling the matters set forth herein, KSBJ agrees that it shall within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Licensing Rules, KSBJ shall implement the following procedures:

- (a) **Operating Procedures on Licensing Rules.** Within sixty (60) calendar days after the Effective Date, KSBJ shall establish Operating Procedures that all Covered Employees must follow to help ensure KSBJ's compliance with the Licensing Rules. As part of the Operating Procedures, the Compliance Officer shall designate a Covered Employee to be responsible for developing and maintaining a database of all FCC licenses held by KSBJ and the expiration date of each such license. The Compliance Officer shall ensure that KSBJ timely files applications for renewal for any FCC licenses that KSBJ intends to operate after the license's expiration date.
- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Licensing Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure KSBJ's compliance with the Licensing Rules. KSBJ shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. KSBJ shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** KSBJ shall establish and implement a Compliance Training Program on compliance with the Licensing Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of KSBJ's obligation to report any noncompliance with the Licensing Rules under paragraph 11 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the Effective Date shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. KSBJ shall repeat the compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

11. **Reporting Noncompliance.** KSBJ shall report any noncompliance with the Licensing Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that KSBJ has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that KSBJ has taken or will take to prevent the recurrence of any such noncompliance. All such reports of noncompliance shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, Room 3-C366, 445 12th Street, S.W. Washington, DC 20554, with a copy submitted electronically to Linda Nagel at Linda.Nagel@fcc.gov and to Ricardo Durham at Ricardo.Durham@fcc.gov.

12. **Compliance Reports.** KSBJ shall file Compliance Reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six months (36) after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of KSBJ's efforts during the relevant period to comply with the terms and conditions of this Consent Decree. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of KSBJ, stating that the Compliance Officer has personal knowledge that KSBJ (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and, (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 11 hereof.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of KSBJ, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (i) each instance of noncompliance; (ii) the steps that KSBJ has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that KSBJ has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-C366, Washington, DC 20554, with a copy submitted electronically to Linda Nagel at Linda.Nagel@fcc.gov and to Ricardo Durham at Ricardo.Durham@fcc.gov.

13. **Termination Date.** Unless stated otherwise, the obligations set forth in paragraphs 9 through 12 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

14. **Voluntary Contribution.** KSBJ agrees that it will make a voluntary contribution to the United States Treasury in the amount of sixteen thousand dollars (\$16,000) within thirty (30) calendar days after the Effective Date. KSBJ shall also send electronic notification of payment to Linda Nagel at Linda.Nagel@fcc.gov, Ricardo Durham at Ricardo.Durham@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made. The payment must be made by check or similar

instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁷ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions that KSBJ should follow based on the form of payment it selects:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

If KSBJ has questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

15. **Waivers.** KSBJ waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order as defined herein. KSBJ shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither KSBJ nor the Commission shall contest the validity of the Consent Decree or of the Adopting Order, and KSBJ shall waive any statutory right to a trial *de novo*. KSBJ hereby agrees to waive any claims it may have under the Equal Access to Justice Act¹⁸ relating to the matters address in this Consent Decree.

16. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

17. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which KSBJ does not expressly consent), that provision will be superseded by such Rule or Commission order.

¹⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁸ Equal Access to Justice Act, Pub L. No. 96-481, 94 Stat. 2325 (1980) (codified at 5 U.S.C. § 504); *see also* 47 C.F.R. §§ 1.1501-1.1530.

18. **Successors and Assigns.** KSBJ agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

19. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the Communications Laws.

20. **Modifications.** The Consent Decree cannot be modified without the advance written consent of both Parties.

21. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

22. **Authorized Representative.** The individual signing this Consent Decree on behalf of KSBJ represents and warrants that he is authorized by KSBJ to execute this Consent Decree and to bind KSBJ to the obligations set forth herein. The FCC signatory represents that he is signing this Consent Decree in his official capacity and that he is authorized to execute this Consent Decree.

23. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

John D. Poutasse
Chief, Spectrum Enforcement Division
Enforcement Bureau

Date

Randy Schroeder
Chairman of the Board
KSBJ Educational Foundation, Inc.

Date